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Office of Campaign and Political Finance

One Ashburton Place, Room 411

Boston, MA 02108

Advisory Opinion

July 17, 2000

AO-00-15

Bob Sprague
Town of Arlington Webmaster
150 Washington Street
Arlington, MA 02474-1534

Re: Questions regarding proposed Web site policies

Dear Mr. Sprague:

This letter is in response to your two May 31, 2000 letters asking for an advisory opinion regarding the proposed adoption of policies governing the use of the Town of Arlington's Web site.

You have stated that an Arlington resident has expressed concerns regarding the posting of information on the Town of Arlington's official Web site, "Arlington Online." The Web site contains links to the Web sites of private individuals. The resident was concerned about a list of Town Meeting members provided to Arlington Online by Paul Schlichtman which contained a link to Mr. Schlichtman's home page. Mr. Schlichtman is Arlington's representative on the Minuteman Regional Vocational School committee. His home page, among other information, contained partisan political views. The resident has raised a number of questions, including whether the Town Web site may be used to provide such links.¹ In addition, the Superintendent of Schools stated to you that she is concerned because other links to Mr. Schlichtman's site remained in public view and Schlichtman's site contained advocacy material promoting a local ballot question.

Because the concerns expressed by the resident, the Superintendent, and others raised issues that may affect the prospective application of the campaign finance law, you have asked for an advisory opinion. In a separate letter, you asked for comments regarding the proposed Web site policy (the proposed policy"), a copy of which is attached to this opinion.

¹ Your questions focus on the extent to which an official Web site may *remove* links or otherwise limit links. You have not asked for guidance regarding the extent to which the Town may *add* links. The office, as discussed below, has stated in other advisory opinions that a municipality's official Web site may be used to add links as a public service if equal access is available. See AO-96-04 and AO-99-14.

Questions

1. May an official town Web site remove links to a private personal Web site?
2. May an official town Web site remove such links if the person who maintains the personal site does not comply with policies adopted by the town?
3. May an official town Web site remove such a link by editing the Web page and removing only the HTML link?
4. May an official town Web site remove links to personal or political sites for an appropriate period before an election?
5. May an official town Web site adopt a policy that would prohibit links to a candidate's Web site if the candidate includes advocacy concerning a ballot question on the candidate's Web site?
6. May an official town Web site adopt a policy that would prohibit links to a candidate's Web site if the candidate's site provides a further link to another site that advocates a particular vote on a ballot question?

Answer

Each question may be answered in the affirmative if the actions referred to in your questions are undertaken in accordance with a policy that ensures that all persons and groups, regardless of political view, have equal access (or lack of access) to the Town's Web site and are treated equally.

The Town's proposed policy is consistent with the campaign finance law. We recommend, however, that the "acceptable use" section of the proposed policy be used to define the extent to which political information may be included in linked material. The campaign finance law would not prohibit links to such sites if links are provided on an equal basis to all sides of an issue.²

Discussion

In Anderson v. City of Boston, 376 Mass. 178 (1978), appeal dismissed, 439 U.S. 1069 (1979), the Supreme Judicial Court concluded that the City of Boston could not appropriate funds, or use funds previously appropriated for other purposes, to influence a ballot question submitted to the voters at a State election. The court stated that the campaign finance law demonstrates an intent "to assure fairness of elections and the appearance of fairness in the electoral process" and that the law should be

² The proposed policy would impose a more restrictive standard than would be mandated by the campaign finance law (it states that "the link must provide a legitimate service"). The campaign finance law would not prohibit such a provision. There may be other legal issues raised by your questions. Such issues are not, however, within the jurisdiction of this office. As drafted, the section may, however, be seen as too vague. Perhaps the "acceptable use" section should be expanded to define what is "legitimate" or to define "legitimate" to mean any "lawful" purpose. I note that the Web site provides a link to area residents and "community resources." The policy might be used to define the extent to which such links may be provided.

interpreted as prohibiting the use of public funds “to advocate a position which certain taxpayers oppose.” 376 Mass. at 193-195. The court also stated that “the city’s use of telephones and printed materials provided by public funds, and its use of facilities paid for by public funds, would be improper, at least unless each side were given equal representation and access.” 376 Mass. at 200.

Accordingly, this office has concluded that governmental entities may not expend public resources or contribute anything of value to support or oppose a candidate, political committee or ballot question. Certain resources may be provided, however, if “equal access” is provided to other candidates.³ See IB-91-01.

The office has issued several advisory opinions relating to the use of the Internet by municipalities. A city may provide links from the city’s homepage to homepages of members of incumbent city councilors. See AO-96-04, in which the office stated that a link to a city councilor’s Web site would comply with the campaign finance law:

Since (1) the creation of the link would not involve the use of public resources to support or oppose any councilor, (2) the minimal use of public resources to establish the link allows councilors to provide services to constituents, and (3) the disclaimer which will be used minimizes any potential appearance of impropriety.

The disclaimer referenced in AO-96-04 stated that the links were being provided as a public service, and that councilors’ Web pages might contain partisan opinions that were the responsibility of the councilors and did not reflect any official position of the City. The city suggested that the link if deemed unfair to non-incumbent candidates could be disconnected 60 days before municipal elections. The office recommended the cut-off be adopted.

In AO-99-14 the office stated that the City of Cambridge could provide a link to candidates Web sites if candidates provide the City with their Web addresses, and that the City could publicize the links and notify each candidate of the availability of the links. The office emphasized that the links could be provided “if links to the City Web site are created *for the purpose of promoting voter participation* and all candidates have equal access to the links (even if all candidates do not actually create links) . . .,” (emphasis in original). The office also stated that the City should not provide training on Web site development to candidates, even if equal access was available. In addition, the office advised the City to include a disclaimer stating that (1) the links to candidate sites are done in reliance on the Web page addresses (URLs) provided by candidates; (2) that the links are displayed for voter information purposes and not to influence the nomination or election of any candidate; (3) candidate Web sites are not monitored or regulated by the City; and (4) Web sites are available to any certified candidate. Finally, the office stated that there is no need to disconnect the links prior to the election, as recommended in AO-96-04, because in this instance, the links “would be available to all

³ “Equal access” means that proponents and opponents who request and obtain space for a meeting or hearing must be provided space on the same terms and conditions. It also means that a city’s Web site may provide a link to candidates if the opportunity is provided on an equal basis to all candidates. See AO-99-15.

candidates, not just incumbents. In addition, the purpose of the links, i.e., to increase voter participation, would be defeated if the links were disconnected before the election.”

In AO-99-15 the office advised that the City of Cambridge that it could provide candidates with a place on the city’s Web site to post information provided to the City by the candidate on a disk or submitted in printed form and scanned by the City’s Webmaster. In addition, the office stated that candidates “should be given the opportunity of either having the City provide a link to their own Web site or having the City provide space for their material on the city’s Web site, but not both.” The office emphasized that “the opportunity must be provided on an equal basis to all candidates.”

Most recently, the office stated that a municipality may use its Web site to post information relating to a school construction ballot question. See AO-00-12, in which the office reasoned that posting the information on the town’s Web site was similar to posting a resolution of a town board on a town hall bulletin board.

It follows from these opinions that links may not only be added but also removed if such action is taken in accordance with a policy that ensures that all persons and groups are treated equally regardless of political viewpoint.⁴ In addition, the Town may remove links for a period before an election, but as noted above, is not required to do so. The Town may not, of course, take actions designed to influence an election. The disclaimer that is now used on the Town’s Web site is appropriate and consistent with the campaign finance law, but may be expanded to reflect the language in the Town’s proposed Web site policy.

This opinion is issued on the basis of your letter and solely within the context of the campaign finance law. I encourage you to contact us in the future if you have further questions regarding any aspect of the campaign finance law.

Sincerely,

A handwritten signature in dark ink, reading "Michael J. Sullivan", is written over a light gray horizontal line. The signature is fluid and cursive.

Michael J. Sullivan
Director

⁴ A policy that would prohibit links to a candidate’s Web site if the candidate’s site provides a further link to another site that advocates a particular vote on a ballot question is unnecessary and probably would be difficult if not impossible to monitor and enforce.